

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

ANTOINE HARRIS,

Petitioner,

v.

Case Number: 2:08-CV-12374

DENISE GERTH, ET AL.,

Respondent.

**OPINION AND ORDER (1) DISMISSING CERTAIN PLAINTIFFS;
(2) GRANTING IN PART AND DENYING IN PART “PLAINTIFFS BUHOVECKY
AND PERCIVAL’S *EX PARTE* MOTION TO MODIFY ORDER . . .;”
(3) DIRECTING PLAINTIFFS BUHOVECKY AND PERCIVAL TO
PAY PROPORTIONATE SHARE OF FILING FEE; AND
(4) GRANTING REMAINING PLAINTIFFS LEAVE TO PROCEED WITHOUT
PREPAYMENT OF FILING FEE AND DIRECTING PERIODIC PAYMENTS**

This is a civil rights action filed under 42 U.S.C. § 1983 by multiple Plaintiffs who are in the custody of the Michigan Department of Corrections. One of the named plaintiffs, Antoine Harris, filed a “Motion to Issue Order for Plaintiffs to Proceed *In Forma Pauperis* and to Divide Fees Proportionately,” requesting that the court grant the Plaintiffs *in forma pauperis* status and provide each Plaintiff thirty (30) days within which to submit an individual motion to proceed *in forma pauperis*. The court declined to waive prepayment of the filing fees before Plaintiffs each requested *in forma pauperis* status. Instead, the court directed each Plaintiff desiring to participate in this lawsuit to submit within thirty (30) days an “Application for Prisoner to Proceed Without Prepayment of Fees or Costs.” (See June 19, 2008 Order.).

Nine Plaintiffs¹ have not filed an “Application for Prisoner to Proceed Without Prepayment of Fees or Costs.” In accordance with the court’s June 19, 2008 Order, the court will dismiss those Plaintiffs.

Two Plaintiffs, Percival and Buhovecky, filed an “Ex Parte Motion to Modify Order Granting in Part and Denying in Part Motion to Proceed *In Forma Pauperis* and For Time to Send Payments.” Plaintiffs Percival and Buhovecky state that they are ineligible for *in forma pauperis* status as they are not indigent. They, therefore, seek fourteen days from the date the court determines the proportionate fee owed by each of them to send payment to the court. The court denies the request to modify the June 19, 2008 Order, but grants the request for fourteen days to send payment of their proportionate share of the filing fee, as set forth below, to the court.

The remaining twenty Plaintiffs (“Indigent Plaintiffs”) filed the papers required by the court’s June 19, 2008 Order and are granted leave to proceed without prepayment of the filing fee. The court must assess and, if funds exist, collect from the Indigent Plaintiffs’ accounts an initial partial filing fee, consisting of twenty percent (20%) of the greater of (1) the average monthly deposits to each Plaintiff’s account, or (2) the average monthly balance in each Plaintiff’s account for the preceding six (6) months. 28 U.S.C. § 1915(b).

Each Plaintiff is proportionally liable for any fees and costs that may be assessed. *In re Prison Litigation Reform Act*, 105 F.3d 1131, 1138 (6th Cir. 1997).

¹ Those plaintiffs are: Nathaniel Hudson, Timothy King, Ronrico Denham, Minddarrius Embroy, Edward Cromer, Lee Massey, Zebediah Holland, John Mease, and Kelvin Meddor.

Thus, any fees and costs for this action must be equally divided among the Plaintiffs.

Id. In this case, twenty-two Plaintiffs remain. The filing fee for a civil action is \$350.00.

Because \$350.00 cannot be divided equally among twenty-two Plaintiffs, twenty Plaintiffs² are liable for \$15.91, and two Plaintiffs,³ randomly selected by the court, are liable for a penny less, \$15.90.

Accordingly, IT IS ORDERED that the pending Applications to Proceed *In Forma Pauperis* [Dkt. ## 8, 10-18, 20, 22, 24-27, 29, 33-35] are GRANTED and the initial partial filing fee for each of the Indigent Plaintiffs is as follows:

Plaintiff:	Initial Partial Filing Fee:
Antoine Harris	\$2.00
Eugene Humbert	\$4.00
Tyrone Jackson	\$0.00
Jeremy Mosely	\$0.00
Stephanale Adams	\$2.00
Jeffrey Carney	\$0.00
Andre Coleman	\$2.00
Darren Patton	\$1.00
Andy Anderson	\$1.00

² Those twenty plaintiffs are: Antoine Harris, Eugene Humbert, Tyrone Jackson, Jeremy Mosely, Stephanel Adams, Jeffrey Carney, Andre Coleman, Darren Patton, Andy Anderson, Edward Hairston, Serrell Butts, James Lindsey, Jeffery Buhovecky, Leon Percival, Julius Bannerman, Randolph Reed, Usamah Carswell, William Echols, William Little, and Curtis Fuller.

³ Those two plaintiffs are: Johnny Jackson, and Lorenzo Anthony.

Edward Hairston	\$0.00
Serrell Butts	\$1.00
Randolph Reed	\$1.00
Usamah Carswell	\$0.00
William Echols	\$3.00
William Little	\$0.00
Curtis Fuller	\$1.00
Johnny Jackson	\$0.00
James Lindsey	\$5.06 ⁴
Lorenzo Anthony	\$0.00
Julius Bannerman	\$1.00

After the Indigent Plaintiffs pay their initial partial filing fees, each Plaintiff is equally and separately liable for their proportional total sum, and they must make monthly payments of twenty percent (20%) of the preceding month's income credited to their accounts until their proportional total sum has been paid. 28 U.S.C. § 1915(b)(2).

IT IS FURTHER ORDERED that “Plaintiffs Buhovecky and Percival’s Ex Parte Motion to Modify Order Granting in Part and Denying in Part Motion to Proceed *In Forma Pauperis* and For Time to Send Payments” [Dkt. # 9] is GRANTED IN PART AND DENIED IN PART. The court DENIES Plaintiffs Buhovecky and Percival’s request to modify the court’s order. The court GRANTS their request for time to send payment.

⁴ According to the formula set forth in 28 U.S.C. § 1915(b), plaintiff Lindsey’s initial partial filing fee is his entire share of the filing fee, \$15.91. On July 22, 2008, a partial payment of \$10.94 was received from Lindsey. Therefore, his remaining partial filing fee is \$4.97.

Plaintiffs Buhovecky and Percival are⁴ granted FOURTEEN DAYS from the date of this order to send their proportionate share of the filing fee, \$15.91 each, to the court. If Percival or Buhovecky fails to pay the filing fee, they will be dismissed and each remaining Plaintiff will be responsible for a recalculated, proportionate share of the filing fee.

IT IS FURTHER ORDERED that Plaintiffs Nathaniel Hudson, Timothy King, Ronrico Denham, Minddarrius Embroy, Edward Cromer, Lee Massey, Zebediah Holland, John Mease, and Kelvin Meddor are DISMISSED.

Finally, IT IS FURTHER ORDERED that if any Plaintiff is transferred to a different prison or released, he is DIRECTED to notify the court immediately of his change of address.

S/Robert H. Cleland
ROBERT H. CLELAND
UNITED STATES DISTRICT JUDGE

Dated: August 6, 2008

I hereby certify that a copy of the foregoing document was mailed to counsel of record on this date, August 6, 2008, by electronic and/or ordinary mail.

S/Lisa Wagner
Case Manager and Deputy Clerk
(313) 234-5522